

Message Text

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ACTION EUR-12

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SECDEF WASHDC

USCINCEUR VAIHINGEN GER

INFO COMNAVFACENGCOM ALEXANDRIA VA

USAEDE FRANKFURT GER

CINCUSAREUR HEIDELBERG GER

CINCUSNAVEUR LONDON ENG

CINCLANT NORFOLK VA

CINCUSAFE RAMSTEIN AB GER

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USAEDE FOR EUDEC

E.O. 11652: N/A

TAGS: MARR NATO

SUBJECT: PREFINANCING OF ARCHITECT/ENGINEER CONTRACTS

FOR NATO INFRASTRUCTURE WORKS

REFS: (A) USCINCEUR MSG ECJ4/7-LE 18743, 181739Z NOV

77 (NOTAL), (B) C-M(77)10, (C) AC/4-DS/1040, (D) DOD

DIRECTIVE 2010.5

SUMMARY. BY REF A CINCEUR HAS AGAIN REQUESTED MISSION ASSISTANCE IN TABLING BEFORE THE INFRASTRUCTURE PAYMENTS ANDPROGRESS COMMITTEE A PREFINANCING STATEMENT CONCERNING ARCHITECT-ENGINEER CONTRACTS FOR VARIOUS INFRASTRUCTURE PROJECTS. WE MAINTAIN, FOR REASONS SET FORTH BELOW, THAT SUCH STATEMENTS ARE NOT REQUIRED BY NATO RULES AND CAN, INDEED, RESULT IN DECISIONS HARMFUL TO UNITED STATES
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INTERESTS. ACTION REQUESTED: WASHINGTON CONFIRMATION THAT SUCH PREFINANCING ACTION IS NOT REQUIRED UNDER THE TERMS OF REF D IF US FINANCIAL RIGHTS ARE OTHERWISE PROTECTED. END SUMMARY.

1. THERE HAS NEVER BEEN A NATO REQUIREMENT FOR PRE-FINANCING ACTION PRIOR TO CONTRACTING OF ARCHITECT-ENGINEER

OR CONSULTANT SERVICES FOR INFRASTRUCTURE WORKS. THE ORIGINAL NATO DOCUMENT (C-M(56)34) ON INFRASTRUCTURE OVERHEAD EXPENSES WAS SILENT ON THE SUBJECT OF CONSULTANT SERVICES. THE AMENDED AGREEMENT (C-M(58)116) WAS ALSO SILENT ON SUCH SERVICES. THE SUBJECT WAS NOT RAISED IN THE P&P COMMITTEE UNTIL THE AIRFIELDS SECTION OF THE NATO INTERNATIONAL STAFF DREW THE COMMITTEE'S ATTENTION TO THE APPARENT LACUNA IN THE RULES AND THE COMMITTEE SUSPENDED PAYMENT FOR SUCH UNPREFINANCED SERVICES PENDING A DECISION BY THE INFRASTRUCTURE COMMITTEE.

2. THE INFRASTRUCTURE COMMITTEE, AFTER LENGTHY DISCUSSIONS ON OTHER ASPECTS OF THE AGREEMENT ON OVERHEADS, DID INCLUDE A RULING TO THE EFFECT THAT "ARCHITECT-ENGINEER FEES ON PREFINANCED WORKS NEED NOT NECESSARILY BE INCLUDED IN A PREFINANCING STATEMENT" (C-M(77)10). THUS, THERE IS NO NATO REQUIREMENT TO MENTION IN A PREFINANCING STATEMENT FOR INFRASTRUCTURE WORKS AN INTENT TO RESORT TO ARCHITECT-ENGINEER SERVICES NOR, A FORTIORI, ANY REQUIREMENT TO MAKE A SEPARATE PREFINANCING STATEMENT CONCERNING ARCHITECT-ENGINEER SERVICES TO BE USED PRIOR TO PREFINANCING OR FUND AUTHORIZATION OF THE WORKS CONCERNED.

3. DURING THE FINAL DISCUSSION OF THE AGREEMENT WHICH WAS TO BECOME C-M(77)10, THE INFRASTRUCTURE COMMITTEE WAS SEIZED BY THE UK DELEGATION WITH A SUGGESTION THAT "A UNCLASSIFIED

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HOST COUNTRY INTENDING TO PUT OUT A LARGE ARCHITECT-ENGINEER CONTRACT (E.G., ON A COSTLY AND SOPHISTICATED PROJECT) SHOULD, IN THE CASE OF PREFINANCING, NOTIFY THE OTHER NATIONS OF ITS INTENTION EITHER WHEN MAKING THE PREFINANCING STATEMENT ON THE PROJECT ITSELF, OR AT A STAGE SUBSEQUENT TO THIS DECLARATION BUT PRIOR TO THE ENGAGEMENT OF AN ARCHITECT-ENGINEER FIRM." THE COMMITTEE AGREED, HOWEVER, THAT THIS LATTER ASPECT OF THE QUESTION NEED NOT BE DEALT WITH IN C-M(77)10, BUT COULD BE MADE THE SUBJECT OF A SEPARATE RULING IN THE CONTEXT OF THE COMMITTEE'S PROPOSED REVIEW OF RULES REGARDING THE HIRING OF ARCHITECT-ENGINEER FIRMS. THIS SUBJECT HAS NOT BEEN PURSUED IN THE INFRASTRUCTURE COMMITTEE, HENCE THE RULING IN C-M(77)10 GOVERNS.

4. OUR RELUCTANCE TO MAKE PREFINANCING STATEMENTS NOT REQUIRED BY NATO RULES STEMS FROM EXPERIENCE WITHIN THE COMMITTEE. IN FACT, SUCH STATEMENTS DRAW ATTENTION TO THE WORKS INVOLVED AND CAN INSPIRE NATIONAL DELEGATIONS TO SADDLE THE HOST OR USER COUNTRY WITH UNDESIRABLE REQUIREMENTS WHICH, IF IGNORED -- AS HAS FREQUENTLY BEEN THE CASE WITH US SERVICES, CAN PUT US FINANCIAL INTERESTS

IN DOUBT AT THE FUND REQUEST STAGE. WE RECOGNIZE, HOWEVER, THAT CINCEUR HAS THE RESPONSIBILITY FOR MONITORING ALL REPEAT ALL US PREFINANCING ACTIONS. WE WOULD SUGGEST, THEREFORE, THAT COMPONENT SERVICES CONTINUE TO ANNOUNCE THEIR INTENTION TO FINANCE ARCHITECT-ENGINEER SERVICES TO CINCEUR AND TO USNATO. WE WOULD SEE OUR ACTION ON SUCH NOTIFICATION TO BE COORDINATION WITH THE HOST NATION DELEGATION AND THE NATO INTERNATIONAL STAFF IN ORDER TO ENSURE THEIR BENEVOLENT TREATMENT OF AN EVENTUAL FURTHER REQUEST COVERING THE SERVICES CONCERNED.

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5. THE ABOVE SUGGESTION WOULD APPEAR TO THOROUGHLY PROTECT US FINANCIAL INTERESTS. THERE IS A POSSIBILITY OF READING THE DOD DIRECTIVE ON PREFINANCING (REF D) TO REQUIRE ACTUAL TABLING OF A PREFINANCING STATEMENT FOR ARCHITECT-ENGINEER SERVICES. MORE CAREFUL READING, HOWEVER, INDICATES THAT THE DIRECTIVE IS AIMED AT PROTECTING US FINANCIAL INTERESTS IN CASES FOR WHICH NATO REQUIRES A PREFINANCING STATEMENT. SINCE THIS IS NOT THE CASE FOR ARCHITECT-ENGINEER SERVICES, REQUEST WASHINGTON CONFIRMATION THAT OUR INTERPRETATION OF REF D IS CORRECT. BENNETT

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